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Montana State Auditor's Office  
2 840 Helena Avenue  
Helena, MT 59601  
3 (406) 444-2004

4 Attorney for the Department of Insurance  
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8 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**  
**STATE AUDITOR'S OFFICE**  
9 **STATE OF MONTANA**

10 IN THE MATTER OF THE PROPOSED  
11 AGENCY ACTION REGARDING THE  
12 INSURANCE PRODUCER'S LICENSE OF  
13 LINDA A. LUCOTCH, License #906713

INS-2009-74

NOTICE OF PROPOSED AGENCY  
DISCIPLINARY ACTION AND  
OPPORTUNITY FOR HEARING  
(LICENCE REVOCATION,  
ADMINISTRATIVE FINE)

14 TO: LINDA A. LUCOTCH  
15 1804 7<sup>TH</sup> Ave. S.  
Great Falls, MT 59405  
16  
17 510 E. Broadway  
Lewistown, MT 59457

18 **PLEASE TAKE NOTICE:**

19 Staff of the Insurance Department (Department) of the office of the Montana State  
20 Auditor and Commissioner of Insurance (Commissioner), pursuant to the authority of the  
21 Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the  
22 Commissioner take disciplinary action against the insurance producer license of Linda A.  
23 Lucotch for violations of Title 33, Chapters 1 and 17 of the Montana Code Annotated.  
24 Specifically, staff is proposing that an administrative fine be imposed and that Linda A.  
25 Lucotch's individual producer license be revoked. The Commissioner has authority to take such  
26 action under the provisions of Mont. Code Ann. §§ 33-1-311, 33-1-314, 33-1-317, 33-17-201,  
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1 33-17-1001, and 33-17-1002. Process was served pursuant to Rule 4D(1)(b) of the Montana  
2 Rules of Civil Procedure.

3 **REASONS FOR ACTION**

4 There is reasonable cause to believe that the following facts will be proven true and  
5 justify disciplinary action against the insurance producer license of Linda A. Lucotch.

6 **FACT ASSERTIONS**

7 1. At all times material hereto, Insurance Producer, Linda A. Lucotch (Lucotch) was  
8 employed by Central Montana Insurance Center (CMIC) in Lewistown, Fergus County, Montana.

9 2. In April of 2009, CMIC bookkeeper Barb Burley (Burley) found inconsistencies  
10 within the bookkeeping. CMIC found that checks appearing to be written to an insurance  
11 company were in fact written to Lucotch and cashed by Lucotch.

12 3. On or about April 27, 2009, CMIC owners Ray Pryor and Bruce Marshall (Marshall)  
13 along with Burley met with Lucotch regarding their concerns that she had been embezzling from  
14 the CMIC premium trust account. Lucotch admitted taking money and advised that she would  
15 pay it all back.

16 4. On April 27, 2009 Lucotch e-mailed Pryor at CMIC advising that she was sorry for the  
17 mess she created and a check for \$52,000.00 was on the way.

18 5. On April 29, 2009 Lucotch again contacted Pryor at CMIC and advised that she had  
19 \$52,000.00 but a 48 hour hold was put on the deposit.

20 6. On April 30, 2009, Lucotch provided CMIC a cashiers check to CMIC for  
21 \$52,000.00.

22 7. On May 1, 2009, Lucotch's employment was terminated by CMIC.

23 8. On or about May 1, 2009, CMIC partner Ray Pryor (Pryor) contacted Fergus County  
24 Attorney Tom Meisner with concerns that an employee, Lucotch, had embezzled from their  
25 premium trust account. Lewistown Police Department Patrolman Scott Murray was assigned the  
26 case and completed the investigation.

27 9. On June 24, 2009 a Warrant was issued through Fergus County District Court for the  
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1 arrest of Lucotch. Lucotch was arrested on July 7, 2009 in Cascade County, Montana.

2 10. On September 18, 2009, Commissioner of Securities and Insurance Licensing Chief  
3 Pam Daugherty received a call from Fergus County Deputy County Attorney Jean Adams  
4 (Adams) with information that insurance producer Linda Lucotch (Lucotch) had been charged  
5 with embezzling insurance premiums from CMIC's premium trust account (CMIC). It was also  
6 brought to the attention of the Department that Lucotch was working at the Cogswell Agency in  
7 Great Falls, Montana. Thereafter, the matter was referred to the State Auditor's Legal and  
8 Investigations divisions.

9 11. On September 23, 2009, Investigator John Forsman (Forsman) met with Adams at  
10 her office in the Fergus County Courthouse. Adams provided Forsman with copies of the Police  
11 Department reports provided to her by Patrolman Murray.

12 12. Department investigation and review of the criminal complaint against Lucotch  
13 revealed that, during the act of embezzlement from CMIC, in the time period from approximately  
14 April of 2006 through February of 2009, Lucotch falsified 33 payments from CMIC so it would  
15 appear that CMIC paid premiums from the CMIC premium trust account to various policies  
16 (which were fictitious) when in fact she made the payments to herself.

17 13. Lucotch executed and concealed her scheme by creating fictitious policyholder  
18 accounts, writing checks to herself from the premium trust account, intercepting CMIC bank  
19 statements, whiting-out the endorsee (herself) in the copies of the checks enclosed with the bank  
20 statements, writing in an insurance company name as the endorsee, and re-copying the statement  
21 check copies, so it would appear, to CMIC, from the bank statement materials that the checks  
22 were written by Lucotch to the insurance company on behalf of policyholders.

23 14. On November 18, 2009, Department Chief Investigator John Forsman contacted  
24 Lucotch at the Cogswell Agency and informed her that he wanted to talk to her. Lucotch refused  
25 to speak to Forsman and instructed Forsman to contact her attorney.

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## CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-15-1903.

2. The Montana Insurance Department is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner and Insurance Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

4. The Commissioner shall administer the Insurance Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).

5. Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*

6. The Commissioner may suspend, revoke, refuse to renew, refuse to issue an insurance producer's license, may levy a civil penalty in accordance with Mont. Code Ann. § 33-1-317, or may choose any combination of actions when an insurance producer has:

engaged in an act or practice for which issuance of the license could have been refused, violated or failed to comply with a provision of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*;

improperly withheld, misappropriated, or converted to the licensee's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license or in the conduct of the affairs under the license; or

used fraudulent, coercive, or dishonest practices, or when the licensee is a sources of injury or loss to the public.

Mont. Code Ann. § 33-17-1001(1)(a), (c), and (f).

7. Lucotch committed multiple violations of Mont. Code Ann. § 33-17-1001(1), during the course of embezzling from her employer. By embezzling from her employer, CMIC, and falsifying payments from CMIC so as to create the appearance she was making premium

1 payments on (fictitious) policies when in fact she made the payments to herself, Lucotch violated  
2 Mont. Code Ann. § 33-17-1001(1)(a),(c), and (f).

3 8. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose a fine not to  
4 exceed the sum of \$25,000 upon a person found to have violated a provision of this code or  
5 regulation promulgated by the commissioner, except that the fine imposed upon insurance  
6 producers or adjusters may not exceed \$5,000 per violation.

### 7 **RELIEF REQUESTED**

8 For violating provisions of the Montana Code Annotated, the Department seeks the  
9 following relief against Lucotch in this matter:

10 1. imposition of a civil penalty (administrative fine) against Lucotch not to exceed the  
11 sum of \$5,000.00 for each of the violations of Mont. Code Ann. § 33-17-1001 alleged  
12 hereinabove;

13 2. revocation of Lucotch's individual producer license; and the

14 3. issuance of an order permanently enjoining Lucotch from further violations of the  
15 Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*

### 16 **STATEMENT OF RIGHTS**

17 You, Linda Lucotch, are entitled to a hearing and to respond to this Notice and present  
18 evidence and arguments on all issues involved in this case. You may have a formal hearing  
19 before a hearing examiner appointed by the Commissioner as provided in the Montana  
20 Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.* If you demand a hearing,  
21 you will be given notice of the time, place and the nature of the hearing.

22 You have a right to be represented by an attorney at any and all stages of this proceeding.

23 If you wish to resist the proposed action under the jurisdiction of the Commissioner, you  
24 must so advise her within twenty (20) days of the date you receive this Notice. You may so  
25 advise her by writing to Michael Winsor, Counsel for the Office of the Commissioner of  
26 Securities and Insurance, State Auditor's Office, 840 Helena Ave, Helena, Montana 59601.

27 While so advising Mr. Winsor, you should make clear whether you demand a hearing, or whether  
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1 you waive formal proceedings and, if so, what informal proceedings you prefer for handling this  
2 case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if  
3 the action could result in suspension, revocation or any other adverse action against a  
4 professional license.

5 Should you request a hearing, you have the right to be accompanied, represented, and  
6 advised by counsel. If the counsel you choose has not been admitted to practice law in the state  
7 of Montana, s/he must comply with the requirements of Application of American Smelting and  
8 Refining Co., 164 Mont. 139, 520 P.2d 103 (1973); and *Mont. Supreme Court Comm'n on the*  
9 *Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

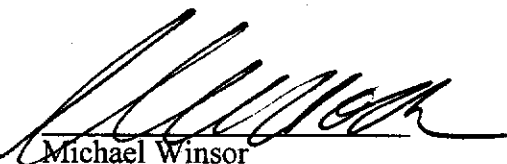
#### 10 CONTACT WITH COMMISSIONER'S OFFICE

11 If you have questions or wish to discuss this matter, please contact Michael Winsor,  
12 Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave, Helena, MT,  
13 59601, (406) 444-2040 or, within Montana, (800) 332-6148. If you are represented by an  
14 attorney, please make any contacts with this office through your attorney.

#### 15 POSSIBILITY OF DEFAULT

16 Failure to give notice or to advise of your demand for a hearing or form of informal  
17 procedure within twenty (20) days will result in the entry of a default order imposing any  
18 sanctions available under Montana law without any additional notice to you pursuant to Mont.  
19 Admin. R. 6.2.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

20 DATED this 25 day of November, 2009.

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24 Michael Winsor  
25 Attorney for the Department of Insurance  
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**Jon A. Oldenburg, Esq.**  
505 W. Main, Ste. 309  
Lewistown, MT 59457

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